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Prevention of armed conflict

Implementation of the resolution establishing the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011

Report of the Secretary-General

Summary

Pursuant to General Assembly resolution 71/248 and my first report (A/71/755), I submit this additional report on the implementation of the resolution and on the setting up of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011. The present report outlines progress made in the operationalization of the Mechanism, notably in terms of administrative set-up and fundraising.

The Mechanism is now becoming operational and ready to collect, consolidate, preserve and analyse information and evidence of the most serious crimes under international law.

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I. Background

1. On 21 December 2016, the General Assembly, by paragraph 4 of resolution 71/248, decided to establish the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.

2. By its resolution 71/248, the General Assembly requested that the steps, measures and arrangements necessary for the speedy establishment and full functioning of the Mechanism should be undertaken without delay, in coordination with the Independent International Commission of Inquiry on the Syrian Arab Republic and building on existing capacities, including the recruitment or allocation of impartial and experienced staff with relevant skills and expertise. The General Assembly requested the Secretary-General to develop the terms of reference of the Mechanism within 20 working days of the adoption of the resolution.

3. I was also requested to report on the implementation of the resolution within 45 days of its adoption. On 19 January 2017, I submitted a first report (A/71/755) on the implementation of the resolution. The terms of reference of the Mechanism were annexed to that report, in which I announced that I would further report on the progress made in the implementation of the resolution, including on the appointment of the Head and Deputy Head of the Mechanism.

II. Introduction

4. Pursuant to General Assembly resolution 71/248 and the terms of reference, the Mechanism is mandated to provide assistance in the investigation and prosecution of persons responsible for the most serious crimes under international law with full independence, impartiality and objectivity.

5. The mandate of the Mechanism is to collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses; and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.

6. The Mechanism will seek to collect information and evidence by receiving it from other sources, including from relevant investigative bodies such as the Commission of Inquiry and the Organization for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism. The Mechanism will also collect additional information and evidence, as appropriate.

7. On the basis of the information and evidence that it has collected, consolidated, preserved and analysed, the Mechanism is mandated to prepare files focusing on the criminal conduct of the persons responsible. The files will include relevant information, documentation and evidence in the Mechanism's possession, both inculpatory and exculpatory, pertaining to the imputable crimes and to the mode or modes of criminal liability recognized under international law. The Mechanism is mandated to share information with national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, provided that those jurisdictions respect international law standards.

8. The Mechanism's mandate is important in contributing to criminal accountability. The mandate would ensure that crucial information and evidence pertaining to human rights violations and abuses and violations of international

humanitarian law are collected and preserved and that case files are prepared for possible use in courts or tribunals with jurisdiction over these crimes, contributing to the fight against impunity. The Mechanism can thus make a decisive contribution to ensuring judicial criminal accountability. I remain fully committed to supporting the Mechanism in the fulfilment of its mandate, while respecting its impartiality and independence.

9. I would like to reiterate that, notwithstanding the establishment of the Mechanism, the Syrian Arab Republic and other States with jurisdiction continue to have the responsibility to investigate violations of international humanitarian law and violations and abuses of international human rights law, promptly, thoroughly, independently and impartially, and to prosecute those responsible.

III. Operationalization of the Mechanism

10. Pursuant to General Assembly resolution 71/248 and my first report, I have taken the necessary steps to establish the Mechanism. The Mechanism is now becoming operational and will soon start to collect, consolidate, preserve and analyse information and evidence of violations of international humanitarian law and human rights violations and abuses, and to prepare files. The main steps taken for the establishment of the Mechanism are highlighted below.

A. Staffing and recruitment

Appointment of the Head and Deputy Head of the Mechanism

11. My first report specified that the Mechanism would be headed by a senior judge or prosecutor with extensive experience in criminal investigations and prosecutions, at the Assistant Secretary-General level, and a deputy with extensive experience in international criminal justice and an in-depth knowledge of international criminal law, international human rights law and international humanitarian law, at the D-1 level. They shall be appointed by me upon consultation with the United Nations High Commissioner for Human Rights and the United Nations Legal Counsel, for an initial period of two years, which shall be renewable.

12. As the concurrence of the Advisory Committee on Administrative and Budgetary Questions is required for the establishment of any positions at the D-1 level or above, the agreement of the Committee was sought for the creation of the two extrabudgetary positions. The Committee concurred with the establishment of the positions on 27 April 2017.

13. Following a transparent and competitive process, and after consultation with the High Commissioner for Human Rights and the Legal Counsel, I appointed Ms. Catherine Marchi-Uhel, of France, as Head of the Mechanism.

14. The selection of the Deputy Head of the Mechanism is ongoing and it is expected that the appointment will be made in the coming weeks.

Appointment of the secretariat of the Mechanism

15. As envisaged in paragraph 41 of my report, the Head and Deputy Head will be assisted in their work by a secretariat composed of impartial and experienced professional and administrative staff, with expertise in the following areas, among others: international criminal justice, human rights law, international humanitarian law, criminal investigation and prosecution, the military, forensic matters, including in particular digital forensics, forensic pathology and forensic imagery, witness and

victim protection, sexual and gender-based crimes and violence, children's rights and crimes against children.

16. A proposed staffing table has been created to illustrate the envisaged structure of the Mechanism. It is expected that the Mechanism will rely on three main substantive sections, coordinated by an executive office. The three sections will respectively: (a) collect and consolidate information and evidence; (b) analyse the information and evidence; and (c) prepare files and share them with competent courts and tribunals. In addition, four smaller services will support the Mechanism in the areas of (a) administration and logistics; (b) information technology and information management; (c) safety and security; and (d) languages.

17. In order to provide the Head and Deputy Head with adequate support when commencing their functions, a small initial secretariat team is being appointed, and the recruitment of the full secretariat will continue in the coming months, giving due consideration to the representation of different legal traditions, gender balance, and the appointment of staff with the necessary language skills and regional expertise.

B. Start-up team

18. Pursuant to paragraph 45 of my report, I requested the United Nations High Commissioner for Human Rights to take the lead in supporting the establishment of the Mechanism and appoint a small early start-up team of impartial and experienced United Nations personnel with the relevant skills and expertise.

19. The start-up team has been enabling the swift launch of the Mechanism's operations. In line with paragraph 45 of the first report, the start-up team has inter alia:

(a) Prepared a deployment plan identifying the administrative and logistical steps to fully operationalize the Mechanism;

(b) Developed a staffing table, prepared job descriptions, and overseen initial recruitment-related matters;

(c) Developed a budget proposal for the Mechanism's operations and prepared funding proposals;

(d) Ensured, with the support of the Programme Planning and Budget Division of the Department of Management, that a trust fund was established on 4 April 2017 to account for voluntary contributions to the Mechanism and for associated expenditure;

(e) Moved into office space identified for the start-up team by the United Nations Office at Geneva;

(f) Liaised with the United Nations Office at Geneva and the Department of Safety and Security to ensure the assessment of the security risks, and the identification of appropriate security risk management measures and their costing;

(g) Initiated an assessment of the Mechanism's long-term information technology needs, including for data management and analysis systems, in liaison with the Office of Information and Communications Technology;

(h) Consulted with the Archives and Records Management Section of the Department of Management regarding the establishment of sound information management processes and the management of the Mechanism's records in accordance with the United Nations records management principles.

20. Considering that paragraph 45 (g) of my first report provides that the start-up team is to liaise with the Commission of Inquiry and all other relevant United Nations and other entities or bodies, as well as Member States, and that in resolution 71/248 the General Assembly called upon all States, all parties to the conflict as well as civil society to cooperate fully with the Mechanism and the Commission of Inquiry to effectively fulfil their respective mandates and, in particular, to provide them with any information and documentation they may possess, the start-up team has also:

(a) Liaised with the Commission of Inquiry, as well as with other relevant United Nations entities, notably on modalities of cooperation;

(b) Responded to interested Member States with a view to (i) informing them about the Mechanism's mandate and the work of the start-up team, (ii) seeking their political and financial engagement with and support for the Mechanism, and (iii) exploring areas of cooperation with the Mechanism to allow for the swift sharing of information with the Mechanism and to ensure that Member States take necessary steps to facilitate such cooperation;

(c) Liaised with several civil society organizations, international, regional and national, to enhance their understanding of the Mechanism's mandate, to discuss modalities for engagement and proactive cooperation, and to secure their commitment to provide the Mechanism with relevant information and documentation;

(d) Liaised with interested courts and tribunals to explore how the Mechanism will share case files with courts and tribunals that may have jurisdiction over these crimes.

21. The start-up team has also prepared first confidential drafts of the internal procedures and methods of work identified in the Mechanism's terms of reference. These drafts aim to regulate, inter alia, the intake of information and evidence, the confidentiality regime under which information and evidence will be held, the process of analysis, and the preparation and sharing of files.

22. In addition, the start-up team has created a public profile for the Mechanism by ensuring that all relevant documents, namely General Assembly resolution 71/248, my first report, the terms of reference of the Mechanism, answers to some frequently asked questions on the Mechanism, and a list of voluntary contributions to the Mechanism, are made available online on the United Nations website, at www.un.org/apps/news/infocusRel.asp?infocusID=146.

C. Estimated budget

23. On the basis of the projected staffing requirements, as well as operational and running costs, it is estimated that the Mechanism will have an annual budget of just above $13 million.

D. Funding

24. The General Assembly decided, in paragraph 5 of resolution 71/248, that the Mechanism will initially be funded exclusively from voluntary contributions. On 6 March 2017, I sent a note verbale to all Member States, requesting sustained multi-year funding for the Mechanism.

25. As at 1 July 2017, 29 Member States had contributed or pledged, in writing or orally, to contribute to the Mechanism a total of approximately US$6,946,455, of which US$4,969,461 had been received.

26. I appreciate the positive response to the creation of the Mechanism, its terms of reference, and the broad donor base for its financing. I encourage ongoing financial support and reiterate in particular my call on Member States to commit themselves to providing multi-year funding for the Mechanism.

27. Experience indicates that voluntary funding can pose serious challenges for the continued sustainability of established institutions. Although the Mechanism is not a judicial institution, some of the challenges faced by international tribunals funded through voluntary contributions could also apply to the Mechanism. It is important to plan for the future and to bear in mind that some activities of the Mechanism, such as those related to the security of victims and witnesses, or archiving and the long-term preservation of information and evidence, will induce long-term costs.

IV. Cooperation

28. I welcome the fact that Member States, in discussions on the situation in the Syrian Arab Republic, as well as in the larger context of accountability, regularly refer to the importance of the Mechanism and that there should be no impunity for the most serious crimes under international law.

29. The General Assembly, in resolution 71/248, called upon all States to cooperate fully with the Mechanism and in particular to provide the Mechanism with any information and documentation they may possess, as well as any other forms of assistance. The Assembly also called upon all parties to the conflict in the Syrian Arab Republic as well as civil society to cooperate fully with the Mechanism and in particular to provide it with any information and documentation they may possess.

30. I am encouraged by the assistance already received by the Mechanism and wish to underline the importance for the Mechanism to receive the full support and cooperation of all States, as well as of the parties to the conflict, and civil society, so as to effectively contribute to accountability for the crimes committed in the Syrian Arab Republic. I call on States to ensure that they have the necessary legal basis and procedures in place to share relevant information and documentation with the Mechanism.

31. I remain fully committed to ensuring that the United Nations system fully cooperates with the Mechanism, and promptly responds to any request, including access to information and documentation, in accordance with United Nations practice.

32. Promoting accountability and ensuring that human dignity is preserved is an integral part of the mandate of the United Nations. In this regard, I welcome the coordination taking place to ensure that the mandates and work of the Commission of Inquiry and the Mechanism are complementary. I am deeply appreciative of the Commission's commitment to cooperate fully with the Mechanism.

33. It is anticipated that some of the information and documentation to be provided to the Mechanism will be confidential in character. I call upon the Mechanism and the entities that will provide information and documentation to work together to seek to ensure that confidentiality concerns relating to such

information and documentation are addressed in a manner that will facilitate the conduct of potential future legal proceedings.

V. Recommendations

34. **I call on Member States:**

(a) **To support the Mechanism financially and to ensure sustainable and long-term funding for the Mechanism by providing multi-year funding;**

(b) **To support the Mechanism politically with a view to ensuring that the mandate of the Mechanism is respected in all bilateral and multilateral processes related to the Syrian Arab Republic;**

(c) **To ensure that their national laws and procedures enable their full cooperation with the Mechanism, both proactively and at the Mechanism's request, and also their use of the files prepared by the Mechanism; and to share with the Mechanism any concerns they may have in this regard and engage with it to resolve them;**

(d) **To investigate violations of international humanitarian law, violations and abuses of international human rights law, and the most serious crimes under international law promptly, thoroughly, independently and impartially, and prosecute those responsible.**

35. **In particular, I urge the Syrian Arab Republic to take the measures necessary to fulfil its primary responsibility to undertake prompt, independent, impartial, thorough and credible investigation and prosecution of any allegation of human rights violations or abuses, violations of international humanitarian law and international crimes and to cooperate fully with the Mechanism.**

36. **I call upon all parties to the conflict in the Syrian Arab Republic as well as civil society to cooperate fully with the Mechanism and, in particular, to provide it with any information and documentation that they may possess.**